



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

May 5, 1978

Thomas J. Saad, Director
of Administrative Services
State Board of Directors for
Community Colleges of Arizona
1535 West Jefferson, Room 123
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Re: 78-87 (R78-129)

Dear Mr. Saad:

On May 4, 1978, you sought our opinion whether Mr. Roger Brooks, a member of the Maricopa County Community College District Governing Board, must vacate his seat on that Board because on May 2, 1978 he was determined by a jury to be guilty of a felony relating to the violation of his official duties.

We regard your request as appropriate to answer because the Maricopa County Attorney's Office has determined a conflict of interest precludes its answering.

We conclude that the office held by Mr. Brooks will become vacant when (and if) the Superior Court enters a judgment of conviction against him regarding this matter.

A.R.S. § 38-291 states in part:

An office shall be deemed vacant from and after the occurrence of any of the following events before the expiration of a term of office:

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8. Conviction of a felony or an offense involving a violation of his official duties.

This section was interpreted by the Arizona Supreme Court in connection with the conviction of a former Arizona Attorney General of a felony and the Court held:

It is our opinion that a vacancy is created the moment a judgment of conviction is entered against a public officer. No appeal or certificate of probable cause can avoid the vacancy or the necessity for appointment . . .

* * *

We conclude . . . [that] a vacancy was created in the office of Attorney General upon the conviction of respondent, and that he now is and has been since December 13, 1947 unlawfully usurping, intruding into, and holding said office. State ex rel. DeConcini v. Sullivan, 66 Ariz. 348, 359, 188 P.2d 592 (1948).

(The respondent in Sullivan was found guilty by jury verdict entered on November 22, 1947, and the entry of the judgment of conviction was made by the court, along with his sentencing, in December 13, 1947.)

We conclude that the term of office of Mr. Brooks is not yet vacant, but deemed vacant on the date when the judgment of conviction is entered by the Superior Court. Any appeal by Mr. Brooks has no effect on this vacancy.

We understand that Mr. Brooks' sentencing date is May 30, 1978. Unless the Superior Court takes some other action inconsistent with the jury verdict, e.g., granting a new trial or entering a directed verdict of acquittal, and assuming there is no postponement in the May 30 date, judgment of conviction will be entered against Mr. Brooks then. See generally, Az.R.Crim.Pro. 26.1, 26.2 and 26.3.

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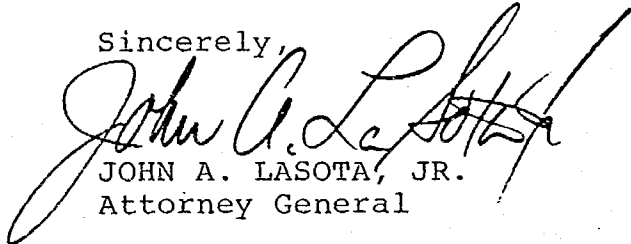
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The procedure to be followed after judgment of conviction is entered is stated in A.R.S. § 38-292:

When an officer is removed, declared insane or convicted of a felony or an offense involving a violation of his official duties, or when his election or appointment is declared void, the body, judge or official before whom the proceedings were had shall give notice thereof to the officer empowered to fill the vacancy.

Therefore, the Superior Court judge entering the order of conviction should give notice to the Maricopa County Superintendent of Schools of the vacancy upon entry of the order of conviction.

Sincerely,



JOHN A. LASOTA, JR.
Attorney General

JAL:JDR:ls